

REMARKS

Claims 1, 6-8, 11-14, 16, and 25-33 are currently pending. No claims have been amended in this response.

I. Withdrawal of Rejection under 35 U.S.C. § 102(b) over Chen

Applicants acknowledge, with appreciation, the indication that the rejection of claims 1, 6-8, 11-14, 16, and 25-34 under 35 U.S.C. § 102(b) over Chen have been overcome in view of the Declaration under 37 C.F.R. §1.132 filed on December 22, 2005.

II. Request Regarding Double Patenting Rejection

Applicants again request that the rejection of claims 1, 6-14, 16, and 24-33 as allegedly unpatentable over claims 1-12 of U.S. Pat. No. 6,713,411 to Cox, et al. under the judicially created doctrine of obviousness-type double patenting be held in abeyance until the Examiner indicates allowable subject matter.

III. Claims Do Comply With the Enablement Requirement

The Examiner has rejected claims 1, 6-8, 11-14, 16, and 24-34 under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the enablement requirement. According to Examiner,

Applicant's 1.132 Declaration shows that the Chen (3,900,625) fails the NFPA 701-1989 test. However, Chen discloses the same structure as Applicant, i.e., laminates comprising PVC film, polyethylene film, synthetic nonwoven fabric, adhesive, antimony oxide and chlorinated paraffin fire retardants. It is unclear to the Examiner how Chen's laminate, which discloses the same structure as Applicants, has failed the test. There appears to be missing information in the present specification and claims that aids the structure in Applicant's claims to pass the NFPA test.

Office Action at 3. Applicants respectfully disagree with this position, for at least the following reasons.

The Chen patent is directed to self-extinguishing laminates in which fibers that are not necessarily fire resistant, are treated with fire resistant materials. Chen specifically teaches that the disclosed laminate will not exhibit adequate fire resistant properties, if these burnable fibers are not properly treated properly with fire resistant adhesives. *See, e.g., col. 4, lines 36-65 (teaching “the **fire resistant adhesive** permits the use in these laminates of fibers which have high strength and highly desirable resiliency properties . . . **but whose fire propagating properties** are marginal . . . , or even non-existing as in for example olefinic fibers such as polypropylene which could not properly be used at all in fire resistant laminates, **except in conjunction with fire resistant adhesive** present in amply adequate quantities to cover such potentially burnable fibers completely.”)(Emphasis added).*

As the foregoing makes clear, Chen’s motivation for using such fibers in the fire resistant film is to impart mechanical properties, such as improved flexibility, light weight and high strength, rather than fire resistance. *See, also, col. 2, lines 20-23 (stating “I use a basic grid of a noninterwoven geometric pattern of high strength fibers of **not** excessively fire sensitive polymeric materials.”) (Emphasis added).*

The laminate described in Example 2 of the Chen patent (and tested in the Rule 132 declaration filed in December 2005), teaches the use of a polyolefin film, which Chen acknowledges has “non-existing” fire propagating properties and a plasticized polyvinyl chloride film, which is not the same as the claimed laminate. Rather, it is clear that Chen’s construction is built on the premise that the resulting laminate will exhibit

adequate fire resistance, as long as the fibers are adequately coated with fire resistant adhesives.

While such a coating is apparently adequate for the test method of interest to Chen, it is not adequate for NFPA 701-1989, as claimed. In other words, as one skilled in the art would appreciate, the adequate fire resistance for Chen's laminate is one that achieves sufficient fire resistance in a horizontal burning method (ASTM D-568), and not necessarily in NFPA 701-1989, the method claimed and reported in the previously filed Rule 132 Declaration¹. See, e.g., col. 5, lines 66-67 of Chen (stating that the "resultant film showed a fire resistance when tested by horizontal burning method") and col. 6, lines 14-15 (describing the ASTM testing method as D-568).

Unlike Chen, the claimed invention is directed to a laminate comprising, *inter alia*, a single layer containing a halogenated flame resistant polymeric film consisting of polyvinyl chloride, polyvinyl bromide, and polyvinylidene chloride. Applicants' specification generally describes, and specifically exemplifies, flame resistant polymeric films within the claimed invention. See, e.g., pages 7 and 9.

To the extent that the claimed invention contains a polyethylene film, Applicants disclosure specifically teaches it is added in an amount to enhance chemical resistance, such as solvent repellency, without adversely affecting the claimed flame char length. See, e.g., page 8 of the specification and claim 34.

¹ Unlike a horizontal burning method, NFPA 701-1989 measures the vertical ignition resistance properties of hanging materials. See, e.g., section 3-3.2 of Exhibit 1 filed with the Rule 132 Declaration on December 22, 2005 (teaching that when conducting this flame test, "[t]he burner shall be moved under the specimen so that the flame is applied vertically to the lower end of the specimen.")(Emphasis added).

For these reasons, Applicants respectfully disagree with the Examiner's conclusion that Chen "discloses the same structure as Applicants" since, as shown, neither the form nor function of the "fire resistant" fibers disclosed in Chen and claimed are the same. Furthermore, Applicants disclosure does describe how the claimed laminate is not only different from the Chen patent, but why such differences lead the claimed invention to pass the NFPA test that Chen fails. Thus, the rejection under 35 U.S.C. §112, first paragraph is improper and should be withdrawn.

IV. Conclusion

In view of the foregoing remarks, Applicants therefore request the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

If there is any fee due in connection with the filing of this Response, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By: 
Louis M. Troilo
Reg. No. 45,284